

Neutral Citation Number: [2023] EWHC 2849 (Ch)

Case No: CR-2023-006021

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY & COMPANIES LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 1 November 2023

Before :

Mr Justice Miles

Between :

IN THE MATTER OF PROJECT
LIETZENBURGER STRASSE HOLDCO S. À R.L.

AND IN THE MATTER OF THE COMPANIES
ACT 2006

Tom Smith KC, Ryan Perkins and Edoardo Lupi (instructed by DLA Piper UK LLP) for
Project Lietzenburger Strasse HoldCo S.à.r.l.
Georgina Peters (instructed by Sullivan & Cromwell LLP and Greenberg Traurig, LLP) for
Nofe Investment S.à r.l. and AXA Real Estate Investment Managers SGP
Hearing dates: 1st November 2023

APPROVED RULING

Mr Justice Miles :

1. This is an application, by Project Lietzenburger Strasse HoldCo S.à.r.l. (**the Plan Company**) to convene three meetings of its creditors to consider and, if thought fit, approve a restructuring plan (**the Plan**) under Part 26A of the Companies Act 2006.
2. The Plan Company is a holding company incorporated in Luxembourg. It contends that it has recently moved its centre of main interests (**COMI**) to England for the purpose of proposing the Plan. The Plan Company is part of a wider group of companies incorporated in Luxembourg and Germany (**the Group**). One of the companies within the Group owns a development site on the Kudamm, a well-known shopping boulevard in Berlin (**the Development**). The Development is the key asset of the Group and is one of the largest uncompleted commercial real estate projects in Germany.
3. The Group has three basic tranches of secured debt, ranking in the following order: (1) senior debt, of about €775 million; (2) the tier 2 debt of about €150 million; and (3) the junior debt of about €95 million. The plan creditors under the proposed Plan are the holders of the senior debt, the tier 2 debt and the junior debt. The total secured debt exceeds €1 billion. All of the relevant debt documents are governed by German law.
4. The Plan Company is a guarantor of the secured debt and it recently assumed the position of a primary obligor by executing a deed of contribution.
5. The Development has suffered from substantial cost overruns. Construction was substantially halted in January 2023 and came to a complete stop in May 2023. The Group's cash is trapped in a blocked account, save for certain emergency liquidity facilities. All three tranches of the Group's secured debt will fall due for repayment on 28 November 2023 and the Group has nowhere near enough cash to repay the sums due. The basic purpose of the Plan is to restore the Group to solvency by restructuring the Group's debt and secured debt and enabling the provision of new money to allow for the completion of the Development.
6. If the Plan fails, the Plan Company contends and has served substantial evidence to show that the relevant alternative to the Plan is formal insolvency proceedings for the Group. The evidence provided by the Plan Company, supported by expert evidence, shows that the tier 2 debt and the junior debt are wholly out of the money. Under the terms of the Plan, the maturity of the senior debt will be extended to 28 November 2025 and the tier 2 debt and junior debt will be released in their entirety.
7. For the purposes of this hearing, the main evidence is given by Mr Beckwith on behalf of the Plan Company, supported by an expert report of Ms Rickelton of FTI Consulting. There is also a witness statement of Mr Paul Cattermole of GLAS, the information agent.
8. The Plan Company is, as I have said, part of a group of companies. The Development is owned by a Luxembourg incorporated company which has been called PropCo in the evidence. 89.9% of the share capital of PropCo is ultimately owned by Aggregate Holdings S.A. (Aggregate), a German real estate business. Aggregate's 89.9% equity

interest in PropCo is indirectly held through two Luxembourg incorporated companies, namely the Plan Company, which holds 50% of PropCo's share capital, and Ionview Holdings S. à r.l., which holds 39.9% of PropCo's share capital. The Plan Company is a direct wholly owned subsidiary of Ionview. In turn Ionview is a direct wholly owned subsidiary of Aggregate Holdings 4 S.à r.l. (**AH4**), which is an indirect wholly owned subsidiary of Aggregate. As I have said the Plan Company is an intermediate holding company.

9. The minority equity interest of some 10.1% is held by external investors, which is apparently a shareholdings structure designed to mitigate the impact of German real estate transfer tax on any future sale of the development. This structure is apparently an example of something which is very common in large German real estate projects.
10. The various tranches of debt which I have described consist of both loans and notes in each case. They are treated in relation to each separate tranche together as the totals which I have already mentioned. There is a common security package which is governed by an intercreditor agreement held by a security trustee on behalf of the secured creditors which sets out the order of priority, first the senior debt, second the tier 2 debt, and third the junior debt.
11. The intercreditor agreement, the trust agreement, which governs the powers of the security trustee, and the finance documents in respect of the secured debt are all governed by German law.
12. The development is a mixed-use site and is divided into seven building parts. Of those parts only one is substantially complete. I was provided with evidence about the valuation of the Development. The Development has run into very substantial cost overruns. The business has been affected by the substantial increase in interest rates. Between July 2022 and September 2023, the ECB fixed rate increased from 0.5% to 4.5%. There has also been a downturn in macroeconomic conditions in Germany. There has also, as is well-known, been a very substantial inflation in relation to the costs of construction materials and labour.
13. As already noted, the construction of the Development was substantially halted in January 2023 and came to a complete stop in May 2023.
14. A payment default is certain to occur on 28 November 2023, when over €1 billion of secured debt will fall due for payment. The Group has nowhere near sufficient liquid assets to repay the debt.
15. There have been protracted negotiations between the Plan Company and the holders of the senior debt and between the holders of the senior debt and the other classes of debt which have been going on, as I understand from the evidence, for many months.
16. As the Plan Company lacked liquidity, certain creditors who make up the senior creditors' committee agreed in September 2023 to provide interim liquidity facilities to the Group in the sum of about €32 million. Those facilities were unsecured and therefore rank behind the senior debt, the tier 2 debt, and the junior debt; they will fall due for repayment on the earlier of the restructuring effective date, i.e. the date when the Plan becomes effective, or the date falling four months from the date when the

interim facilities were entered into. If the Plan fails the interim facilities can be accelerated by the lenders.

17. It has been agreed that all senior creditors are entitled, if they wish, to participate in the interim facilities on a pro rata basis at any time before 28 November 2023. The Plan Company's evidence states that it has been apparent for a good time that the holders of the tier 2 debt and the junior debt are wholly out of the money. The evidence shows that the senior creditors nonetheless sought to negotiate a consensual settlement or compromise which would lead to a restructuring with all of the classes of creditors. That negotiation has not been successful and ultimately this Plan has therefore been proposed.
18. Other creditors have brought proceedings in the courts of Luxembourg, seeking to wind up the Plan Company. A representative of one group of creditors which holds tier 2 debt had its petition dismissed by the Luxembourg Court on 20 October 2023. As I understand it, there is another outstanding petition before the Luxembourg Court.
19. On 16 October 2023 the Plan Company entered into a lock-up agreement with certain of the senior creditors and various other parties. The parties to that agreement have agreed to support the Plan. At the time of this hearing, I was told that over 89% of senior creditors have either signed up to the lock-up agreement or entered into a standstill agreement.
20. The Plan Company has taken a number of steps to move its COMI to England in order to seek to ensure that the court has jurisdiction in relation to the Plan. These steps include a number taken over the last three weeks or so.
21. I have already explained what the Plan is designed to do in relation to the existing debt. As I have already said, part of the purpose of the Plan is to facilitate the introduction of new money. All of the senior creditors will be entitled, though not obliged, to participate in a new tranche of super-senior financing with a principal amount of €190 million. The senior creditors will be entitled to participate in this financing pro rata to their existing holdings of senior debt. The deadline for agreeing to participate in the senior financing will be 1 December 2023. This financing will rank in priority to the senior debt.
22. The new super-senior financing has been sized so as to enable the Group to complete the Development. It will also be used to repay the interim facilities and other transaction costs. There would be an elevation incentive for any senior creditors who agreed to participate in the super-senior financing. The basic idea is that senior creditors who participate in the super-senior financing will be given an enhanced priority position in the post-restructuring waterfall as regards part of the existing debt. The Plan is also designed to ensure that senior creditors who do not participate in the super-senior financing will be no worse off than in the relevant alternative.
23. This is intended to be achieved by there being a restatement of senior debt into four tranches: first, the elevated senior financing which will be allocated to senior creditors who participate in the super-senior financing; second, the NWO (not worse off) senior financing, which will be allocated to senior creditors who do not participate in the

super-senior financing, this is to be calculated by reference to an amount equal to their expected recoveries in the relevant alternative; third, the tranche A stub senior financing, which will be the balance of the senior debt held by participating senior creditors over the amount restated as elevated senior financing; and fourth, the tranche B stub senior financing which will be the balance of the senior debt held by non-participating senior creditors in excess of the amounts restated as NWO senior refinancing.

24. The Plan Company contends that for the purposes of Section 901G of the Act, the relevant alternative is a formal insolvency process in relation to the Group companies. The Plan Company relies on the evidence of Ms Rickelton.
25. In summary her conclusions are that:
 - (a) The Group is currently heading towards an imminent and inevitable payment default of over €1 billion of secured debt with insufficient liquid assets available to repay even a small part of that sum.
 - (b) If the Plan were to fail or there were to be no Plan it is likely that all the obligors would enter into formal insolvency proceedings.
 - (c) That the managers of companies incorporated in Luxembourg and Germany have strict duties to file for insolvency proceedings within a relatively short period of time after certain statutory triggers are reached. Absent a Plan, these triggers would be engaged.
 - (d) In the event of an insolvency process the Development would be sold and the proceeds distributed in the order of priorities mandated by the intercreditor agreement. The Plan Company has relied on a detailed valuation development from Knight Frank which puts the current market value of the uncompleted Development at approximately €392 million.
 - (e) The likely realisations in the relevant alternative would be significantly less than the sum of €392 million because there would be likely to be a substantial insolvency discount of around 25% were the Development to be sold through a formal insolvency process.
 - (f) On that basis, the senior debt would make a recovery in the relevant alternative of about 44.5 cents in the euro; the tier 2 debt and junior debt would make nothing.
 - (g) On the basis of the Knight Frank report, the gross development value of the Development as a developed property is some €909 million. Were the Plan to be approved and the various steps pursuant to it undertaken and the Development was taken to the state referred to in the gross development valuation, that would enable all of the super-senior financing to be repaid and would allow a much better recovery for the senior debt.
 - (h) The recovery for each senior creditor would depend on whether it agrees to participate in the super-senior financing given the elevation structure referred

to above. Ms Rickelton has calculated that participating senior creditors would recover 89.3 cents in the euro and nonparticipating senior creditors would recover 50 cents in the euro. Again, the outcome for the Plan would be insufficient to provide any recovery for the tier 2 debt or the junior debt.

26. Under section 901C(1) of the Act, the court may, on an application under that subsection: "... order a meeting of the creditors or class of creditors or of the members of the company or class of members as the case may be, to be summoned in such manner as the court directs."
27. The procedure for a convening hearing under Part 26A of the Act is governed by the Practice Statement. The court's functions at the convening hearing are to consider: (a) whether the relevant creditors or members have been given sufficient notice of the convening hearing; (b) whether the jurisdictional conditions laid down in section 901A are satisfied and whether there is any other jurisdictional roadblock that would unquestionably prevent the court from sanctioning the Plan; and (c) whether the class meetings proposed by the Plan Company are properly instituted. The court does not at the convening hearing consider the merits or the fairness of the Plan, which will arise for consideration at a future sanction hearing if the Plan is approved by at least one of the plan meetings.
28. The first question is the notice of the convening hearing.
29. There is no fixed notice period in the statute or the practice statement and the cases show that the appropriate period of notice is a fact-sensitive matter depending upon the complexity of the scheme or plan, the urgency of the company's financial position, the sophistication of the creditors, and other such factors.
30. There have been a number of cases which have addressed the appropriate approach at a convening hearing if insufficient notice has been given or if there is not enough time at the convening hearing to decide particular issues. In such cases the court may decide to make a convening order and to further the determination of the relevant issues to the sanction hearing. If it does take that course, the court reaches at the convening hearing at least a prima facie view on the jurisdictional requirements and needs to be reasonably satisfied in relation to the proposed class composition.
31. It seems to me from my experience in a number of cases that something of a practice may be developing of convening hearings being brought on relatively short notice and for the plan company's representatives then to say that because creditors have not had a proper opportunity to consider the plan, the court should simply proceed by pushing off all issues to the sanction hearing. If that practice is developing, I take the opportunity to deprecate it. In any case governed by the Practice Statement, it is important that the relevant creditors or members are given sufficient notice of the convening hearing wherever that is possible. This means that in cases other than ones of extreme urgency and where there is a good reason, the court should be placed in a position at the convening hearing to decide the matters properly to be determined at it. It is not appropriate to regard the convening hearing as effectively a directions hearing where everything is to be pushed off to the sanction hearing. No doubt the court will in any case consider the position taken by such creditors who have made representations

at the convening hearing or prior to it. It is important that practitioners in this field should take on board that proper notice must be given wherever possible and it should not be assumed that in all cases the court will simply wave through issues to be dealt with at a later date.

32. In the present case the Practice Statement letter was circulated to plan creditors on 16 October 2023, that is to say 16 days before this hearing. The Plan Company accepted that it would have preferred to give the plan creditors more than 16 days' notice of the convening hearing and the Plan Company accepts that in cases of this kind, notice of around 21 days is often given.
33. There have been letters from three solicitors in the run up to this hearing. Macfarlanes, who act for a tier 2 debt holder, have complained about the length of the notice given to them for the purpose of this hearing. They have raised certain concerns about the jurisdiction of the court, or at least the question of whether there is a sufficient connection between this court and the Plan Company. They have, however, said that they would be content if the court were to direct that all issues going to jurisdiction, sufficient connection, class composition and any other issue were to be left to the sanction hearing.
34. Hogan Lovells act for holders of the senior debt who intend to oppose the Plan. They take a similar position to Macfarlanes.
35. Freshfields act for a junior debt holder which holds around 26.38% of the junior debt. They too complain about the length of notice for this hearing and reserve their client's position.
36. None of those creditors appeared at the hearing before me today. None of them have sought an adjournment of this hearing. Two of them have agreed a common approach with the Plan Company that any contentious issues will be capable of being taken at the sanction hearing.
37. I had real concerns about the length of notice given in this case and raised them with counsel for the Plan Company and the senior creditors. Counsel contended that there were reasons for the relatively short notice, in particular there was a change in the management of the Plan Company and other Group companies in August, when Mr Beckwith became one of the managers of the various companies - and since then time has been spent with him becoming properly familiarized with the business and financial position of the Plan Company and other companies in the Group and that there was then the need for further negotiations between the senior creditors and negotiations leading up to the standstill agreement. It was only once a workable agreement had been reached between the Plan Company and the senior creditors that it was possible to promote the Plan.
38. Counsel for the senior creditors addressed me also in relation to earlier periods and explained that the senior creditors had, for many months, sought to negotiate a consensual restructuring with all of the holders of debt including the other two tranches. Counsel also explained that it was only when one of the creditors in one of the other classes took steps to replace management that the senior creditors were then

effectively required to take their own steps to replace the management of the Plan Company.

39. Counsel emphasised the amount of time and effort that has been devoted by the members of the senior creditors' committee in seeking to find a resolution for the Group's financial difficulties and said that this was a case now of real urgency.
40. Counsel for the Plan Company also submitted that it was unlikely that anything would now be achieved by adjourning the convening hearing since it was very unlikely that there would be any issue which would be sufficiently crystallised at a further convening hearing on which the court could rule and which was at all likely to lead to the Plan not going forward to meetings and a sanction stage.
41. Counsel for the Plan Company submitted that nobody so far had taken any issues to do with class composition and that if there were issues concerning jurisdiction or sufficient connection with the courts of this country, it was very likely that at the convening hearing the court would conclude that the Plan Company's position was at least arguably correct and would therefore, on the existing authorities, convene meetings and leave those issues to be finally decided at a sanction hearing.
42. Moreover, those issues might turn or be influenced by expert evidence in relation to questions of enforceability and the parties were unlikely, if there was a real dispute on the point, to be in a position to serve and digest such evidence in time for a further convening hearing in, say, a fortnight's time.
43. I have been persuaded that I should proceed with this hearing and not adjourn it. I want to emphasise again that I am concerned about the way that notice has been given in this case. I am not particularly impressed by the evidence about the reasons why the Plan has not been promulgated until now. It has been staring the senior creditors and the Plan Company in the face for many months that there is a liquidity crisis - and that there is a repayment date at the end of November. It is not much of an answer when questions of urgency are raised to say that it is only recently that a plan has been formulated, given that it concerns financial indebtedness held by sophisticated creditors. They should be aware well before crunch dates, like the end of November in this case, that something needs to be done. The court is unimpressed by being confronted by arguments based on urgency when things could reasonably have been negotiated and formulated at an earlier stage.
44. I am not impressed by the evidence here that things could only really have happened after the change of management in August, still less by the submission that it was only when junior creditors took steps to change management that senior creditors then themselves took steps to do so. The senior creditors, as I understand it, have had the right to change the management for a long time and, as I say, the problems which are now being faced have been pretty obvious for a long time.
45. There are two things which temper my concerns. The first is that I accept the submission of counsel for the Plan Company that there would now be little purpose in adjourning this hearing. The work has been done to prepare for it, the court has done its pre-reading, and I accept the submission that it is very unlikely that there would be

a sufficiently crystallised issue at a resumed convening hearing which might lead to the Plan not then going ahead to the further stages. So this does not appear to me to be a case where at a fairly early stage the court would be likely to come to a conclusion which would stop the Plan in its tracks. Sometimes that is of benefit to all parties if a sufficiently clear objection is obvious at the convening stage. I accept counsel's submission that that is unlikely to be the case here.

46. The second thing that tempers my concern is that this is no longer a case where the Plan Company is asking for an extremely truncated timetable for a sanction hearing. It now appears that the court would be able to accommodate a sanction hearing in late January/early February 2024, but not before. I was told that there was confidence that the lock-up arrangements could be extended until then. I do not therefore think that this is a case where the Plan Company is using the urgency of the matter to seek to railroad the other parties or the court into an unduly compressed timetable.
47. In all those circumstances, I have decided that I shall continue with the convening hearing, albeit this case is on the cusp.
48. The next question concerns jurisdiction. As I have said, issues concerning jurisdiction will not be finally and conclusively decided at this hearing or in a way which will be binding on dissenting creditors. It seems to me that nonetheless the court has to reach at least a prima facie view that the conditions are satisfied. The conditions A and B are defined in Section 901A of the Act.
49. Condition A is that the company has encountered or is likely to encounter financial difficulties that are affecting or will or may affect its ability to carry on business as a going concern.
50. I am satisfied to the necessary threshold that the Plan company has encountered or is likely to encounter financial difficulties affecting or will or may affect its ability to carry on business as a going concern. This is, to my mind, established to the necessary standard by the evidence of Mr Beckwith and the supporting expert report of Ms Rickelton. The simple point is that there is €1 billion of debt which fairly shortly becomes due for repayment and there is nothing like enough money to repay it, far from it.
51. Condition B is that a compromise or arrangement is proposed between the company and its creditors, or any class of them, and the purpose of the compromise or the arrangement is to eliminate, reduce or prevent or mitigate the effect of any of the financial difficulties mentioned in subsection (2).
52. I am satisfied to the necessary standard that the Plan Company is a "company". I am satisfied to the necessary standard that the plan creditors are, as things stand at least, creditors of the Plan Company. I am also satisfied to the necessary standard that the Plan is an arrangement between the Plan Company and the plan creditors.
53. There is a potential argument that the word "arrangement" does not cover the case where a class of creditors is offered nothing, even where it is out of the money. However, there being a number of authorities culminating in *Re Prezzo InvestCo Limited* [2023] EWHC 1679 (Ch) at [42] to [43], where the court has held that in a

plan under Part 26A, it is not necessary for the company to offer any consideration to creditors who are out of the money. I will say no more about that point than that at the moment I am satisfied to the necessary standard. I gather that that question was touched on in a recent appeal which took place last week in relation to the *AGPS BondCo PLC* case, but it is not known what the outcome of that case might be and indeed whether it will address this particular point.

54. I am also satisfied to the necessary standard that the purpose of the Plan is to restore the Plan Company to financial health by extending the maturity of the senior debt and releasing the out-of-the-money debt.
55. I turn to other potential jurisdictional roadblocks. At the convening hearing the court may indicate where it is obvious that it has no jurisdiction to sanction the scheme or whether there are other factors which would unquestionably lead the court to exercise its discretion to sanction the scheme: see *Re Noble Group Limited* [2009] BCC 349 at [76].
56. As to the international elements of this case, Part 26A of the Act applies to a company, which means a company liable to be wound up under the Insolvency Act 1986. A foreign company is liable to be wound up as an unregistered company under that Act and therefore is a company for the purposes of the Companies Act 2006. There is a separate issue as to whether the Plan Company has sufficient connection with England and whether the Plan will be internationally effective. It was explained by Mr Justice Snowden in *Re ColourOz Investment 2 LLC* [2022] BCC 926 at [57] that these questions which are linked do not go to the existence of jurisdiction but go to the exercise of the court's discretion whether to sanction the scheme and should therefore not be determined at the convening hearing.
57. The Plan Company has explained in broad terms that it will submit that there is sufficient connection with England by virtue of the fact that, so it contends, the Plan Company has moved its COMI to England. I will say no more about that at this stage other than to note that various creditors whose solicitors have communicated with the Plan Company before this hearing have raised the question whether the COMI has indeed been so moved and whether that would constitute a sufficient connection with England on the particular facts of this case.
58. The Plan Company also explains that at the sanction hearing, it will rely on expert evidence of Luxembourg and German law.
59. I also note under this head that on 15 October 2023 the Plan Company executed a deed of contribution in favour of PropCo and AH4 which are the borrowers and/or issuers of the secured debt. Under the deed of contribution, the Plan Company takes on an obligation to contribute to in respect of any amounts paid by PropCo or AH4 in respect of the debt. This mechanism of using a deed of contribution as part of a plan or scheme has been considered in a number of authorities. At this stage I will say no more than that I am satisfied that there is no knockout point or jurisdictional roadblock that would mean this element of the Plan is ineffective.

60. I turn to the question of class composition. The principles are well-known. In the present case it is that there should be separate meetings of the creditors of the senior debt, the tier 2 debt and junior debt. This reflects the principle that creditors of different rankings should vote in separate classes. No objection has been taken by any of the potentially dissenting creditors and it seems to me that this is an obviously sensible starting point.
61. The counsel for the Plan Company has identified a number of points which might potentially lead to the fracturing of the classes but submit that none of them do.
62. In turn these are as follows: first, there are the arrangements for a consent fee to be paid to each senior creditor who accedes to the lock-up agreement on or before the date falling one calendar day before the intended plan meetings. Each such senior creditor will be entitled to receive a fee equal to 1% of the senior debt that it holds. Similar consent fees have been offered in numerous schemes and restructurings and there are a number of authorities about this.
63. Two themes emerge from the authorities. First, such fees are unlikely to fracture the class where they are available to all of the relevant creditors at least in cases where they remain available effectively up to the date of the meeting. The second theme is to consider materiality and materiality in this regard is to be measured against the outcome for creditors in the relevant alternative.
64. I am satisfied to the necessary standard (good arguable case) that the consent fees do not fracture the classes in the present case. They are available to all creditors more or less up to the date of the planned meetings. Second, the fee is modest in size by reference to the difference between the senior creditors' likely recoveries under the Plan of 89.3 cents in the euro against the likely recoveries in the relative alternative of up to 44.5 cents in the euro.
65. The second type of fee or arrangement which might have an impact are the elevation provisions. As I have already explained, any senior creditors who agree to participate in the super-senior financing would be given new tranches of senior debt with an enhanced ranking. These kind of arrangements have been considered in a number of other cases most recently in *ED&F Man Holdings Limited* [2022] EWHC 433 (Ch). At [74] Mr Justice Michael Green said that such arrangements did not fracture the class where they are available to all creditors pro rata. I am satisfied to the necessary standard that this is not a fracturing feature.
66. The third possible fracturing feature is backstop fee arrangement. The members of the senior creditors' committee have agreed to backstop the super-senior financing in return for a backstop fee equal to 4.5% of the principal amount of the super-senior financing of €190 million. I have seen evidence from FTI Consulting that this is a reasonable rate for the provision of the backstop service in a case of this kind and that the fee is in line with other similar backstop fees in recent schemes and plans sanctioned by the court.
67. There have been many cases in which the court has held that such fees do not operate to fracture the class. The essential analysis in those cases is that such a fee is a

commercial one paid in consideration for a commercial underwriting service which is required by the debtor group.

68. Again, I am satisfied to the necessary standard, without conclusively deciding the point, that this is not a fracturing feature.
69. The fourth possible fracturing feature concerns the agreement to pay a structuring fee to members of the senior creditor's committee. They have carried out much work in negotiating and structuring the plans. The Plan Company has agreed to pay a structuring fee of €6.65 million to the senior creditors' committee. These kinds of work fees have been again considered in a number of authorities that were recently summarised in *Re Haya Holdco 2 Plc* [2022] EWHC 1079 (Ch) at [72]. In that case the court held that the work fee was not a form of bounty or disguised consideration but was a fee for a commercial services that benefitted all scheme creditors by enabling the scheme to be negotiated and implemented. I am satisfied to the necessary standard that the same reasoning applies here.
70. The fifth possible fracturing feature concerns the interim facilities. As I have already explained, the senior creditors' committee has provided interim facilities to the Group of about €32 million. These were essential to prevent the insolvent collapse of the Group. I am satisfied to the necessary standard that this does not operate to fracture the class. The short answer advanced by the Plan Company at the moment and which seems to me to have some force to it is that all of the senior creditors are entitled to participate in the interim facilities on a pro rated basis until 28 November 2023 being the business day after the anticipated date of the plan meetings.
71. In these circumstances I am satisfied to the necessary standard that the proposals of the Plan Company to hold plan meetings for three classes of creditors is an appropriate proposal. I have already explained that none of the dissenting creditors who have so far complained about the Plan have taken a point about class composition. However, it will be open to them at the sanction hearing to do so.
72. For the above reasons, I have concluded that it would be appropriate for the three plan meetings to be convened and for a timetable to be ordered to lead to a sanction hearing on the dates identified above.